

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JULY 1, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 479**

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**Introduced by Assembly Member Chesbro**

February 24, 2009

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An act to amend Sections 41730, 41731, 47134, 41735, 41736, 41800, 44004, and 50001 of, and to add Sections 40004, 41734.5, 41780.01, and 42649 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 479, as amended, Chesbro. Solid waste: diversion.

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components, including a source reduction component, a recycling component, and a composting component. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling, and composting activities.

Existing law requires the board to review, at least once every 2 years, a jurisdiction's source reduction and recycling element and household hazardous waste element. The board is required to issue an order of compliance if the board finds that a jurisdiction has failed to implement its source reduction and recycling element or its household hazardous

waste element, pursuant to a specified procedure. If, after issuing an order of compliance, the board finds the city, county, or regional agency has failed to make a good faith effort to implement those elements, the board is authorized to impose administrative civil penalties upon the city, county, or regional agency.

This bill would require the board, on January 1, 2020, and annually thereafter, to ensure that 75% of all solid waste generated is source reduced, recycled, and composted. *The bill would prohibit the board from imposing any enforceable requirements against a local agency or a solid waste enterprise or that includes aspects of solid waste handling that are of local concern to implement this 75% diversion level.*

(2) Existing law requires a local agency to impose certain requirements on an operator of a large venue or event to facilitate solid waste reduction, reuse, and recycling.

This bill would require the owner or operator of a business that contracts for solid waste services and generates more than 4 cubic yards of total solid waste and recyclable materials per week to take specified action by January 1, 2011.

(3) Existing law prohibits an operator of a solid waste facility from making a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit unless the change is approved by the enforcement agency. Existing law requires the enforcement agency, within 60 days of receipt of an application for a revised permit, to inform the operator of its determination.

This bill would require the enforcement agency to inform the operator that it is requiring the ~~revision~~ *modification* of the solid waste facility permit *without a revision of the permit* to allow the change if the enforcement agency determines that the proposed change meets specified requirements. By imposing new duties upon a local enforcement agency with regard to an application for a revised permit, the bill would impose a state-mandated local program.

(4) Existing law requires a city, county, and city and county to incorporate the nondisposal facility element and any amendment to the element into the revised source reduction and recycling element at the time of the 5-year revision of the source reduction and recycling element. Existing law requires the board to review an amendment to a nondisposal facility element. Existing law requires a local task force to review and comment on amendments to a nondisposal facility element.

This bill would repeal those requirements. The bill would instead require a city, county, city and county, or regional agency to update all

information required to be included in the nondisposal facility element. The bill would provide that the update is not subject to approval by the board or comment and review by a local task force.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares both of  
2 the following:

3 (1) Since the enactment of the California Integrated Waste  
4 Management Act of 1989 (Division 30 (commencing with Section  
5 40000) of the Public Resources Code), local governments and  
6 private industries have worked jointly to create an extensive  
7 material collection and recycling infrastructure and have  
8 implemented effective programs to achieve a statewide diversion  
9 rate above 50 percent.

10 (2) Although the state now leads the nation in solid waste  
11 reduction and recycling, the state continues to dispose of more  
12 than 40 million tons of solid waste each year, which is more than  
13 the national average on a per capita basis. Additional efforts must  
14 be undertaken to divert more solid waste from disposal in order  
15 to conserve scarce natural resources.

16 (b) The Legislature further finds and declares all of the  
17 following:

18 (1) Approximately 64 percent of the state's solid waste disposal  
19 is from commercial sources, including commercial, industrial,  
20 construction, and demolition activities. In addition, 8 percent of  
21 the state's solid waste disposal is from multifamily residential  
22 housing that is often collected along with the commercial waste  
23 stream.

24 (2) The state's local governments have made significant progress  
25 in reducing the amount of solid waste disposal from single-family  
26 residential sources that make up 28 percent of the state's disposal,

1 but have faced more challenges in reducing disposal from the  
2 commercial and multifamily sources.

3 ~~(3) The disposal of commercial solid wastes harms natural~~  
4 ~~resources, negatively impacts the state's environment, prevents~~  
5 ~~materials from circulating in the state economy to produce jobs~~  
6 ~~and new products, and contributes to global warming.~~

7 *(3) The disposal of recyclable materials in the commercial solid*  
8 *waste stream prevents materials from circulating in the state*  
9 *economy to produce jobs and new products. Reducing the disposal*  
10 *of these materials will conserve landfill capacity and contribute*  
11 *to a reduction in greenhouse gas emissions and climate change.*

12 (4) The state has long been a national and international leader  
13 in environmental stewardship efforts and mandating the diversion  
14 of solid waste away from disposal. Bold environmental leadership  
15 and a new approach are needed to divert commercial solid waste  
16 away from disposal.

17 (5) By exercising a leadership role, the state will lead the  
18 business community toward a future in which the environment  
19 and the economy both grow stronger together by recycling  
20 materials, which creates new jobs, instead of burying resources,  
21 which exit the economy forever.

22 (6) By requiring commercial recycling, the state will help  
23 businesses reduce costly disposal fees and reclaim valuable  
24 resources.

25 SEC. 2. Section 40004 is added to the Public Resources Code,  
26 to read:

27 40004. (a) The Legislature finds and declares all of the  
28 following:

29 (1) Solid waste diversion and disposal reduction require the  
30 availability of adequate solid waste processing and composting  
31 capacity.

32 (2) The existing network of public and private solid waste  
33 processing and composting facilities provides a net environmental  
34 benefit to the communities served, and represents a valuable asset  
35 and resource of this state, one that must be sustained and expanded  
36 to provide the additional solid waste processing capacity that will  
37 be required to achieve the additional solid waste diversion targets  
38 expressed in Section 41780.01 and the commercial recycling  
39 requirement expressed in Section 42649.

1 (3) The provisions in existing law that confer broad discretion  
2 on local agencies to determine aspects of solid waste handling that  
3 are of local concern have significantly contributed to the statewide  
4 diversion rate exceeding 50 percent, and further progress toward  
5 decreasing solid waste disposal requires that this essential element  
6 of local control be preserved.

7 (b) It is the intent of the Legislature to encourage the  
8 development of the additional solid waste processing and  
9 composting capacity that is needed to meet state objectives for  
10 decreasing solid waste disposal by identifying incentives for local  
11 governments to locate and approve new or expanded facilities that  
12 meet and exceed their capacity needs, and to recognize local  
13 agencies that make significant contributions to the state's overall  
14 solid waste reduction and recycling objectives through the siting  
15 of facilities for the processing and composting of materials diverted  
16 from the solid waste stream.

17 (c) By setting a new solid waste diversion target in Section  
18 41780.01 and new commercial waste recycling requirements in  
19 Section 42649, the Legislature does not intend to limit a right  
20 afforded to local governments pursuant to Section 40059, or to  
21 modify or abrogate in any manner the rights of a local government  
22 or solid waste enterprise with regard to a solid waste handling  
23 franchise or contract.

24 SEC. 3. Section 41730 of the Public Resources Code is  
25 amended to read:

26 41730. Except as provided in Section 41750.1, each city shall  
27 prepare, adopt, and, except for a city and county, transmit to the  
28 county in which the city is located a nondisposal facility element  
29 that includes all of the information required by this chapter and  
30 that is consistent with the implementation of a city source reduction  
31 and recycling element adopted pursuant to this part. The  
32 nondisposal facility element and any updates to the element shall  
33 not be subject to the approval of the county and the majority of  
34 cities with the majority of the population in the incorporated area.

35 SEC. 4. Section 41731 of the Public Resources Code is  
36 amended to read:

37 41731. Except as provided in Section 41750.1, each county  
38 shall prepare, adopt, and, except for a city and county, transmit to  
39 the cities located in the county a nondisposal facility element that  
40 includes all of the information required by this chapter and that is

1 consistent with the implementation of a county source reduction  
2 and recycling element adopted pursuant to this part. The  
3 nondisposal facility element and any updates to the element shall  
4 not be subject to the approval of the majority of cities with the  
5 majority of the population in the incorporated area.

6 SEC. 5. Section 41734 of the Public Resources Code is  
7 amended to read:

8 41734. (a) (1) Prior to adopting a nondisposal facility element,  
9 the city, county, or regional agency shall submit the element to  
10 the task force created pursuant to Section 40950 for review and  
11 comment.

12 (2) Prior to adopting a regional agency nondisposal facility  
13 element, if the jurisdiction of the regional agency extends beyond  
14 the boundaries of a single county, the regional agency shall submit  
15 the element for review and comment to each task force created  
16 pursuant to Section 40950 of each county within the jurisdiction  
17 of the regional agency.

18 (b) Comments by the task force shall include an assessment of  
19 the regional impacts of potential diversion facilities and shall be  
20 submitted to the city, county, or regional agency and to the board  
21 within 90 days of the date of receipt of the nondisposal facility  
22 element for review and comment.

23 SEC. 6. Section 41734.5 is added to the Public Resources Code,  
24 to read:

25 41734.5. (a) Once a nondisposal facility element has been  
26 adopted, the city, county, or regional agency shall update all  
27 information required to be included in the nondisposal facility  
28 element, including, but not limited to, new information regarding  
29 existing and new, or proposed nondisposal facilities.

30 (b) Updates shall be provided to the board within 30 days of  
31 any change in information.

32 (c) Copies of the updated information shall also be provided to  
33 the local task force and shall be appended or otherwise added to  
34 the nondisposal facility element.

35 (d) The local task force shall not be required to review and  
36 comment on the updates to the nondisposal facility elements.

37 (e) Updates to the nondisposal facility elements are not subject  
38 to approval by the board.

39 SEC. 7. Section 41735 of the Public Resources Code is  
40 amended to read:

1 41735. (a) Notwithstanding Division 13 (commencing with  
2 Section 21000), the adoption or update of a nondisposal facility  
3 element shall not be subject to environmental review.

4 (b) Local agencies may impose a fee on project proponents to  
5 fund their necessary and actual costs of preparing and approving  
6 updates to nondisposal facility elements.

7 SEC. 8. Section 41736 of the Public Resources Code is  
8 amended to read:

9 41736. It is not the intent of the Legislature to require cities  
10 and counties to revise their source reduction and recycling elements  
11 to comply with the requirements of this chapter.

12 SEC. 9. Section 41780.01 is added to the Public Resources  
13 Code, to read:

14 41780.01. On or before January 1, 2020, and annually  
15 thereafter, the board shall ensure that 75 percent of solid waste  
16 generated is source reduced, recycled, or composted. *In*  
17 *implementing this section, the board shall not include any*  
18 *requirements that are enforceable against a local agency or solid*  
19 *waste enterprise, or that includes aspects of solid waste handling*  
20 *that are of local concern.*

21 SEC. 10. Section 41800 of the Public Resources Code is  
22 amended to read:

23 41800. (a) Except as provided in subdivision (b), within 120  
24 days from the date of receipt of a countywide or regional integrated  
25 waste management plan that the board has determined to be  
26 complete, or any element of the plan that the board has determined  
27 to be complete, the board shall determine whether the plan or  
28 element is in compliance with Article 2 (commencing with Section  
29 40050) of Chapter 1 of Part 1, Chapter 2 (commencing with Section  
30 41000), and Chapter 5 (commencing with Section 41750), and,  
31 based upon that determination, the board shall approve,  
32 conditionally approve, or disapprove the plan or element.

33 (b) (1) Within 120 days from the date of receipt of a city,  
34 county, or regional agency nondisposal facility element that the  
35 board has determined to be complete, the board shall determine  
36 whether the element that the board has determined to be complete  
37 is in compliance with Chapter 4.5 (commencing with Section  
38 41730) and Article 1 (commencing with Section 41780) of Chapter  
39 6, and, based upon that determination, the board shall approve,

1 conditionally approve, or disapprove the element within that time  
2 period.

3 (2) In reviewing the element, the board shall:

4 (A) Not consider the estimated capacity of the facility or  
5 facilities in the element unless the board determines that this  
6 information is needed to determine whether the element meets the  
7 requirements of Article 1 (commencing with Section 41780) of  
8 Chapter 6.

9 (B) Recognize that individual facilities represent portions of  
10 local plans or programs that are designed to achieve the diversion  
11 requirements of Section 41780 and therefore may not arbitrarily  
12 require new or expanded diversion at proposed facilities.

13 (C) Not disapprove an element that includes a transfer station  
14 or other facility solely because the facility does not contribute  
15 towards the jurisdiction's efforts to comply with Section 41780.

16 (c) If the board does not act to approve, conditionally approve,  
17 or disapprove an element that the board has determined to be  
18 complete within 120 days, the board shall be deemed to have  
19 approved the element.

20 SEC. 11. Section 42649 is added to the Public Resources Code,  
21 to read:

22 42649. (a) On or before January 1, 2011, the owner or operator  
23 of a business that contracts for solid waste services and generates  
24 more than four cubic yards of total solid waste and recyclable  
25 materials that are not solid waste per week shall arrange for  
26 recycling services, consistent with state or local laws or  
27 requirements, including a local ordinance or agreement, applicable  
28 to the collection, handling, or recycling of solid waste, to the extent  
29 that these services are offered and reasonably available from a  
30 local service provider.

31 (b) A commercial waste generator shall take either of the  
32 following actions:

33 (1) Source separate specified recyclable materials from solid  
34 waste and subscribe to a basic level of recycling service that  
35 includes the collection of those recyclable materials or specific  
36 provisions for authorized self-hauling.

37 (2) Subscribe to an alternative type of recycling service that  
38 may include mixed waste processing that yields diversion results  
39 comparable to source separation.



1 (c) For the purposes of this section, “business” means a  
2 commercial entity operated by a firm, partnership, proprietorship,  
3 joint stock company, corporation, or association that is organized  
4 as a for-profit or nonprofit entity.

5 (d) This section does not limit the authority of a local agency  
6 to adopt, implement, or enforce a local commercial recycling  
7 requirement that is more stringent or comprehensive than the  
8 requirements of this section or limit the authority of a local agency  
9 in a county with a population of less than 200,000 to require  
10 commercial recycling.

11 (e) This section does not modify or abrogate in any manner  
12 ~~either~~ any of the following:

13 (1) A franchise granted or extended by a city, county, or other  
14 local government agency.

15 (2) A contract, license, or permit to collect solid waste  
16 previously granted or extended by a city, county, or other local  
17 government agency ~~on or before January 1, 2010~~.

18 (3) The existing right of a business to sell or donate their  
19 recyclable materials.

20 (f) (1) When adopting an ordinance pursuant to this section, a  
21 local agency may consider the adequacy of areas for collecting  
22 and loading recyclable materials.

23 (2) Notwithstanding paragraph (1), a local agency shall not  
24 consider the adequacy of areas for collecting and loading recyclable  
25 materials for purposes of determining noncompliance with this  
26 section at a development project, as defined pursuant to Section  
27 42905, if the development project was approved by the local  
28 agency on or after September 1, 1994.

29 ~~(g) Subdivision (a) shall be enforced pursuant to Section 40059.~~

30 *(g) Pursuant to Section 40059, a county, city, district, or other*  
31 *local government agency may determine aspects of, and means*  
32 *of, providing the recycling services required under subdivision*  
33 *(a).*

34 SEC. 12. Section 44004 of the Public Resources Code is  
35 amended to read:

36 44004. (a) An operator of a solid waste facility may not make  
37 a significant change in the design or operation of the solid waste  
38 facility that is not authorized by the existing permit, unless the  
39 change is approved by the enforcement agency, the change  
40 conforms with this division and all regulations adopted pursuant

1 to this division, and the terms and conditions of the solid waste  
2 facilities permit are revised to reflect the change.

3 (b) If the operator wishes to change the design or operation of  
4 the solid waste facility in a manner that is not authorized by the  
5 existing permit, the operator shall file an application for revision  
6 of the existing solid waste facilities permit with the enforcement  
7 agency. The application shall be filed at least 180 days in advance  
8 of the date when the proposed modification is to take place unless  
9 the 180-day time period is waived by the enforcement agency.

10 (c) The enforcement agency shall review the application to  
11 determine all of the following:

12 (1) Whether the change conforms with this division and all  
13 regulations adopted pursuant to this division.

14 (2) Whether the change requires review pursuant to Division  
15 13 (commencing with Section 21000).

16 (d) Within 60 days from the date of the receipt of the application  
17 for a revised permit, the enforcement agency shall inform the  
18 operator, and if the enforcement agency is a local enforcement  
19 agency, also inform the board, of its determination to do any of  
20 the following:

21 (1) Allow the change without a revision to the permit.

22 (2) *Allow the following changes without a revision to the permit*  
23 *through a modification to the permits allowed pursuant to*  
24 *regulations developed by the board:*

25 (A) *The proposed change is to allow a nondisposal facility to*  
26 *increase the amount of solid waste that it may handle and that*  
27 *increased amount is within the existing design capacity as*  
28 *described in the facility's transfer processing report and review*  
29 *pursuant to Division 13 (commencing with Section 21000).*

30 (B) *The proposed change is to allow a disposal facility to add*  
31 *a nondisposal activity to the facility that will increase the amount*  
32 *of solid waste that may be handled as described in the facility's*  
33 *report of facility information and review pursuant to Division 13*  
34 *(commencing with Section 21000).*

35 ~~(2)~~

36 (3) Disallow the change because it does not conform with the  
37 requirements of this division or the regulations adopted pursuant  
38 to this division.

39 ~~(3) Require a revision of the solid waste facilities permit to~~  
40 ~~allow the change including cases where the enforcement agency~~

determines that the proposed change to add maximum tonnage is provided for within the existing design capacity as described in the facility transfer processing report and environmental review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(4) *Require a revision of the solid waste facilities permit to allow the change.*

(4)

(5) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44305) of Chapter 4. The enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).

(f) Under circumstances that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any

1 reasonable conditions determined to be necessary to ensure  
2 compliance with applicable state standards.

3 (h) (1) (A) Before making its determination pursuant to  
4 subdivision (d), the enforcement agency shall submit the proposed  
5 determination to the board for comment and hold at least one public  
6 hearing on the proposed determination. The enforcement agency  
7 shall give notice of the hearing pursuant to Section 65091 of the  
8 Government Code, except that the notice shall be provided to all  
9 owners of real property within a distance other than 300 feet of  
10 the real property that is the subject of the hearing, if specified in  
11 the regulations adopted by the board pursuant to subdivision (i).  
12 The enforcement agency shall also provide notice of the hearing  
13 to the board when it submits the proposed determination to the  
14 board.

15 (B) The enforcement agency shall mail or deliver the notice  
16 required pursuant to subparagraph (A) at least 10 days prior to the  
17 date of the hearing to any person who has filed a written request  
18 for the notice with a person designated by the enforcement agency  
19 to receive these requests. The enforcement agency may charge a  
20 fee to the requester in an amount that is reasonably related to the  
21 costs of providing this service and the enforcement agency may  
22 require each request to be annually renewed.

23 (C) The enforcement agency shall consider environmental justice  
24 issues when preparing and distributing the notice to ensure that  
25 the notice is concise and understandable for  
26 limited-English-speaking populations.

27 (2) If the board comments pursuant to paragraph (1), the board  
28 shall specify whether the proposed determination is consistent with  
29 the regulation adopted pursuant to subdivision (i).

30 (i) (1) The board shall, to the extent resources are available,  
31 adopt regulations that implement subdivision (h) and define the  
32 term “significant change in the design or operation of the solid  
33 waste facility that is not authorized by the existing permit.”

34 (2) While formulating and adopting the regulations required  
35 pursuant to paragraph (1), the board shall consider  
36 recommendations of the Working Group on Environmental Justice  
37 and the advisory group made pursuant to Sections 71113 and 71114  
38 and the report required pursuant to Section 71115.

39 SEC. 13. Section 50001 of the Public Resources Code is  
40 amended to read:

1 50001. (a) Except as provided by subdivision (b), after a  
2 countywide or regional agency integrated waste management plan  
3 has been approved by the California Integrated Waste Management  
4 Board pursuant to Division 30 (commencing with Section 40000),  
5 a person shall not establish or expand a solid waste facility, as  
6 defined in Section 40194, in the county unless the solid waste  
7 facility meets one of the following criteria:

8 (1) The solid waste facility is a disposal facility or a  
9 transformation facility, the location of which is identified in the  
10 countywide siting element or amendment thereto, which has been  
11 approved pursuant to Section 41721.

12 (2) The solid waste facility is a facility that is designed to  
13 recover for reuse or recycling at least 5 percent of the total volume  
14 of material received by the facility, and that is described in the  
15 nondisposal facility element that has been approved pursuant to  
16 Section 41800 or is included in an update to that element.

17 (b) Solid waste facilities other than those specified in paragraphs  
18 (1) and (2) of subdivision (a) shall not be required to comply with  
19 the requirements of this section.

20 (c) The person or agency proposing to establish a solid waste  
21 facility shall prepare and submit a site identification and description  
22 of the proposed facility to the task force established pursuant to  
23 Section 40950. Within 90 days after the site identification and  
24 description is submitted to the task force, the task force shall meet  
25 and comment on the proposed solid waste facility in writing. These  
26 comments shall include, but are not limited to, the relationship  
27 between the proposed solid waste facility and the implementation  
28 schedule requirements of Section 41780 and the regional impact  
29 of the facility. The task force shall transmit these comments to the  
30 person or public agency proposing establishment of the solid waste  
31 facility, to the county, and to all cities within the county. The  
32 comments shall become part of the official record of the proposed  
33 solid waste facility.

34 (d) The review and comment by the local task force shall not  
35 be required for an update to a nondisposal facility element.

36 SEC. 14. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 a local agency or school district has the authority to levy service  
39 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O